

National Maritime Security Advisory Committee: May 6, 2005

25 May 2005

The National Maritime Security Advisory Committee (NMSAC) met via teleconference on 6 May 2005, to review and discuss the recommendations submitted by the Credentialing Work Group (CWG). The CWG responded to questions submitted by the Coast Guard (CG) and the Transportation Security Administration (TSA) regarding the development of a Transportation Worker Identification Card (TWIC) for the maritime sector. **Executive Director, Captain Frank Sturm**, United States Coast Guard, called the meeting to order at 10:30 a.m. The minutes are a synopsis of the teleconference. Audio recordings of the public meeting may be reviewed and will be retained within the Office of Port and Cargo Security (G-MPS-2) at Coast Guard Headquarters for two years from the date of the meeting.

The report as adopted by the Committee with comments from labor is appended. (See attached).

The following NMSAC Members participated in the teleconference:

Mr. Wade Battles	Ms. Mary Frances Culnane
Mr. John Dragone	Mr. William Eglinton
Mr. David Halstead	Ms. Lisa Himber
Mr. John Hyde	Ms. Alice Johnson
Mr. Christopher Koch	Mr. Joseph Langjahr
Mr. Basil Maher	Mr. Charles Raymond
Mr. Timothy Scott	Mr. James Stolpinski
Mr. Thomas (Ted) Thompson	Mr. Mark Witten
Mr. Victor Zaloom	

CAPT Sturm thanked all of the members of the CWG for their efforts in coming up with a series of recommendations for the TWIC program within such a short period of time. David Halstead's, and Lisa Himber's roles as CWG co-chair were recognized.

Ms. Himber provided an overview of the activities of the CWG as it developed the recommendations before the committee. She noted that a significant number of the NMSAC members were on the working group. She also noted that the work group was created by the NMSAC and consisted of approximately 25 other members (in addition to the NMSAC members), from the public who represented various geographic cross-sections and different elements of the maritime industry. She noted that the CWG responded to the following questions submitted by the CG and TSA:

1. The first question addressed was to define the term "secure area", as it differs from "restricted area" discussed in the Maritime Transportation Security Act of 2002. The CWG recommends that the secure area should coincide with the access controlled area as determined by the Owner/Operator.
2. The second question asked for recommendations on where biometrics readers should be located. The CWG recommended that the regulation should not

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stipulate where the access points should be, which should be left to the individual facility, vessel or platform operator.

3. The group was asked to provide an estimate of the population that would be required to have a TWIC. The CWG determined that examples of the population that could be used to extrapolate in modeling could be provided, but at this time the CWG was unable to provide an approximation of the total population of workers who would need to receive a TWIC.
4. The next question regarded whether or not there should be an employer sponsorship process. This question resulted in significant discussion. The majority of the CWG agreed that there should not be a sponsor enrollment component of the application. A minority felt there should be sponsorship and the CWG report out contains rationale on both sides of the question.
5. Specific recommendations for disqualifying offenses were requested as well as comments on a waiver and appeal process. The group reviewed a list of disqualifying offenses that had been provided with the original tasking statement and agreed that most were consistent with or close to the list that was published for drivers seeking a hazardous materials (HAZMAT) endorsement on their driver's licenses. The CWG agreed with that list. The CWG endorsed a limited term waiver for individuals currently employed on the date of implementation of the TWIC program and not otherwise a security risk, and that those individuals should be eligible to receive a TWIC.

Mr. Halstead stated that the CWG had posed questions back to TSA and the CG for clarification on some of the issues in the HAZMAT rule, and asked if those questions have been addressed.

Mr. Stolpinski inquired if additional comments submitted by the ILA were received by the CWG (see appended report, paragraph 13).

Ms. Himber was not aware of the status of the comments.

Mr. Stolpinski advised that the ILA believes the whole process of developing TWIC recommendations is being rushed and that there are a lot of gaps in the process.

Ms. Himber responded that the ILA does not seem to be the only group that feels the process is being rushed.

CAPT Sturm requested Mr. Halstead be more specific on what was requested from TSA and the Coast Guard.

Mr. Halstead stated that the CWG asked that TSA/CG look at question #5, subparagraph a. He asked that the TSA attorneys review the language of question #5 against the

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HAZMAT regulation and clarify the criminal language. He indicated that #5 needed to be struck if there was not an appropriate answer or clarity for #5, subparagraph a.

Ms. Himber resumed her summary of the points and stated that further discussion should resume after completion of the summary.

6. The sixth question asked for recommendations on the type of biometric to be used, if any, besides fingerprint. The CWG agreed the TWIC must include a digital photograph, and if any biometrics is to be included beyond the fingerprint they should be similar standards for other national and international credentialing programs, specifically the US-VISIT or FAST program. The CWG also recommended that the biometric be revisited after the prototype concludes.
7. The next question asked for comment on whether a federally managed approach versus a federally regulated approach was more appropriate. Federally managed involves the federal government not only issuing the regulation, but also the standard for the card and overseeing and managing the enrollment, application, card production and card issuance processes. The federally regulated approach would suggest that DHS would issue a regulation and a standard, and that each individual port or area or sector of the transportation industry would manage its own card enrollment and issuance, etcetera. The CWG unanimously agreed that this should be a federally managed approach.

Mr. Herzel Eisenstadt, representing the ILA, asked for clarification of what federal management meant, whether it meant the program would be outsourced with federal review and oversight.

Ms. Himber indicated that the CWG's understanding of federal management was that the federal government would have overall responsibility for the program, including all components, from enrollment to usage. If TSA were unable to provide resources to support that, the CWG recommends that the federal government look to other offices or agencies, or even state or local agencies that have a fiduciary safety role to serve as trusted agents.

Mr. Eisenstadt asked if that would create a situation of possible inconsistency, because there are several states and several ports. There is a need for consistency.

Ms. Himber noted that the CWG suggested that a federally managed program would achieve that consistency where a federally regulated program may not.

Mr. Eisenstadt requested enumeration of the deficiencies of a federally regulated program that would increase inconsistencies.

CAPT Sturm noted that as a matter of process, only NMSAC members should be recognized during this portion of the discussion and members of the public would be provided an opportunity for input later in the meeting.

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Ms. Himber again resumed her presentation of the issues:

8. Question eight asked for recommendations on who would enroll individuals and collect biographic and biometric data. The CWG recommends that DHS provide as many enrollment centers as practically possible. Enrollment centers should be staffed by DHS personnel or adequately trained trusted agents. The specific rationale for using public employees is included. Use of existing infrastructures for enrollment centers is discussed. The CWG approves the pre-enrollment process that is currently being used for the TWIC prototype. Another recommendation is that card issuance and distribution should be centralized.
9. Question nine related to the cost, to the worker or employer and who should pay. The CWG recommended specific language that those already holding credentials and have been screened at an equal or higher standard, for example, HAZMAT endorsement, should not have to pay a second time to undergo another set of screening. CWG recommended the individual applicant be responsible to pay the fee at the time of application, but the regulation should be silent on whether the employer would reimburse the employer. The CWG also recommended that the cost for the TWIC must be consistent across all enrollment centers.
10. Question ten related to the period of validity of the TWIC. The CWG recommended the TWIC should be valid for a five-year period, but that a sweep of the individual's background should be conducted at least annually.
11. Question eleven asked about the manner for phasing in the use of the TWIC. The CWG recommended that if there needed to be a phased-in approach, that it should be regional or geographic rather than by type of employee or type of sector within the maritime industry. The CWG also recommended that the ultimate implementation date be consistent across the United States.
12. Question twelve asked for comment on requiring a TWIC for individuals with access to Security Sensitive Information. The CWG recommended that the TWIC not be required for such individuals because the need-to-know basis for security sensitive information might be for one-time only situations or situations where the holding of a TWIC is something that is ongoing.
13. Question thirteen requested additional comment on anything that was not included previously.

Mr. Halstead added that there were extensive conversations on each of the questions, and a variety of solid input from everybody was received. He opined that, with the exception of question #4, where there is a majority/minority report, the group reached consensus on the rest of the questions.

Following the summary, the meeting was turned over to Chairman Koch to facilitate the discussion and public comment period.

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Mr. Koch acknowledged and thanked Ms. Himber and Mr. Halstead for the extensive hours and effort spent on managing the working group process. Noting that the CWG timeline for completing this project was ambitious, the Coast Guard and TSA had been put in a position where they had a difficult timeline to meet as well. Recognizing the regulatory process, he noted that this is not the end of these issues. There will be a rule-making proposed subsequently that everybody in the NMSAC, as well as the public, will have opportunity to provide further comment as the TWIC rules are developed. For this report the CWG had numerous meetings, received numerous comments from non-NMSAC members, off-shore interests, labor interests, and terminal operating interests. The staff work provided to support this report was acknowledged for making the process go as smoothly as possible.

Discussion was opened for NMSAC members to comment on the CWG's recommendations.

Mr. Stolpinski cautioned that the process was moving too quickly and strongly recommended taking the time to get it right since the TWIC regulation will ultimately place people's livelihoods at stake.

Mr. Koch reiterated that there was great sensitivity to this issue and that ongoing discussions are expected as the rule-making process proceeds.

Mr. Thompson asked what kind of feedback from Coast Guard can be expected and when?

LCDR Bruce Walker indicated that after the report is adopted by the Committee, the Coast Guard and TSA can then take the committee's input and review it as they develop the joint proposed rule. It will be a number of months before the Notice of Proposed Rulemaking is promulgated. At that time, additional opportunities will be provided for members of the public to comment on the proposed rule itself.

Mr. Battle commented on question #4, regarding sponsorship. He noted that there was contentious discussion within the CWG, with strong opinions that sponsorship would be a critical component to the opposite extreme that this is an individual that is concerned to obtain the TWIC. There was also a group in the middle that felt sponsorship wasn't a bad thing but that it should not be a requirement in order to obtain the TWIC card. His reading of the group was that sponsorship would be acceptable, but that it should not be a requirement.

Ms. Himber reiterated that a roll call vote was taken at the last CWG conference call and a significant majority voted against requiring sponsorship. She noted that the report provides rationale for both sides of the question.

Mr. Eglinton commented that the report was developed on a very quick timeline. He noted that he met with representatives of maritime labor and that they endorse sponsorship for future employees in the maritime industry to get a TWIC. He stated that

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letters of intent from an employer or union, as were used some years ago, could be utilized for this purpose.

Mr. Koch provided a point of clarification, noting that a letter of intent would not be an employment relationship; it would be a letter from an employer that would state that an employer intended to hire the seafarer. A letter of intent would not be an active employer/employee commitment.

Mr. Eglinton responded that is correct; the letter would be a vetting process where an individual would have met with an employer or a union and the employer/union would verify that there is a job opening, *per se*, if that individual were able to obtain a TWIC. He further noted that there had been discussions regarding having the TWIC become the MMD and the MMD become the TWIC; thereby, creating a one-card-fits- all approach. Also noting international implications of the potential for the TWIC to also be used for the Seafarer Identification (SID) for US mariners, he recommended language endorsing the TWIC also become the MMD for US mariners.

Mr. Stolpinski commented on the issue of card portability, noting that the TWIC needs to work across multiple jurisdictions or states.

Ms Himber commented that her understanding is that this is the purpose of the TWIC. It would eliminate the need for having different cards for different ports or different geographic areas.

Mr. Stolpinski agreed and reiterated the need for federal preemption for those states with maritime worker identification programs. He further noted that as with the HAZMAT rule, the ILA strongly believes that the list of disqualifying crimes must have some relationship to homeland security and not just normal criminal offenses.

Mr. Halstead noted that a lot of time was spent on that issue and everyone felt comfortable with the list that was there.

Mr. Stolpinski responded that if the list moves away from maritime security, then labor would have a major problem with that.

Ms. Himber noted that these comments relate to question #5; stating that this was one of the questions where there were some open questions, for example there is a comment about some of the offenses listed on the sheet which were marked as permanently disqualifying, and the CWG did not know whether or not that meant that there was no possibility of ever receiving a waiver for those specific offenses. An answer was not provided to that.

Mr. Halstad reiterated that these are the issues he referred to earlier that were referred back to TSA; no response has been provided.

Ms. Himber requested that the comments be resent.

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Mr. Stolpinski commented that the ILA point of view is that something regarding forgiveness should be discussed.

Mr. Eglinton noted that maritime labor is concerned that there needs to be some due sense of the imperative nature of needing facility access in order to board a vessel to sail. It would not be acceptable for a mariner to be held at the main gate in the wee hours of the morning awaiting an escort if the port facility has been appropriately notified of the mariner's arrival. He stated that the TWIC does not guarantee access to a facility, but the mariner must be allowed access to his place of work (the vessel) in time to make sail. Secondly, labor would advocate that union officials and seafarer welfare representatives be allowed to obtain a TWIC.

Mr. Stolpinski commented that Administrative Law Judges should rule on waiver cases, not the people/agency denying the TWIC.

The floor remained open for further comments by committee members. Hearing no further comments, the chair noted that labor's items be added to the report and annotated as maritime labor's comments. The members agreed that maritime labor's comments would be incorporated with question #13.

The floor was then opened for public comments.

Mr. Tom McWhorter, Training Manager, Florida Marine Transporters, Inc., Mandeville, LA., offered comments from the inland river towboat, barge sector. He noted that individuals who have previously had background investigations not be required to undergo another investigation. For example, those done for MMD purposes, or similar background checks should be recognized for TWIC purposes. This would avoid having to undergo the multiple checks and the expense associated with that. He expressed concerns for the costs to the mariners and wanted to know how the costs will be allocated. He also expressed concern over the list of offenses and whether they were comparable to those offenses found in 46 CFR Parts 10 and 12.

Mr. McWhorter further commented that if the facility may or may not accept the TWIC, there would be no benefit for a mariner to have a TWIC to get on a ship. Each employer currently has their own cards to get access to the company's facility, and he would advocate for the TWIC to take the place of that system.

Mr. Martine Rojas, American Truckers Association was recognized. He urged the body to look at the HAZMAT interim final rule of November 24, 2004, which indicates the specific criteria used to deny a person a HAZMAT endorsement. Some criteria were left open to "catch all" and much is left to interpretation as to the individual's character and background and when an offense occurred. The specific criteria, such as no foreign aliens or people dishonorably discharged from the military, came from the Safe Explosives Act. He also commented that the trucking industry endorses the concept of compatibility of a single card throughout the various ports on a nationwide basis. There

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should be portability similar to that developed under the free and secure trade program whose card is sponsored by a company. Within that program, a driver can move from company to company and enter at any port of entry as long as the driver has a FAST card.

Mr. Rojas expressed agreement that if a driver has already gone through a background check such as the HAZMAT endorsement, it should be compatible with the TWIC card. Whether the card will be an identification (ID) card or an access card, this will be reflected in the end cost of the card.

Mr. Rojas asked if the card is used as an access card, if there would be fingerprint readers at every point of entry to a terminal or port facility to capture a fingerprint? This group would like the TWIC to be a true ID card and not access control, otherwise an industrial type program would be needed similar to the US-VISIT program at our ports of entry.

Mr. David Tubman, Marine Engineers Beneficial Association was recognized. He seconded comments of Bill Eglinton and Mr. Stolpinski, noting that most in labor are prepared to pay cost of the card itself. However, the cost of the background investigation should be at least in part supported by the government for conducting and administering the TWIC program.

Mr. Eisenstadt, attorney for ILA was recognized. Referring to the proposed HAZMAT regulation which pertains to a crime involving a transportation security incident, he noted that the statute says a basis for barring an individual is for causing a “**severe transportation security incident**”. He noted that, should there be a strike; the union doesn’t want to be in the position of having an incidental infraction related to security, as a reason to bar the striking union member from receiving a TWIC. He noted that the statute says “severe” and that Congress meant what it said. He also noted that, per the statute, any disqualifying crime must have some nexus to terrorism.

Mr. Eisenstadt further commented that the secure area on a marine terminal can be an issue because a terminal has multiple uses and purposes, whereas a ship is self-contained. He suggested developing a system of color coded cards that would allow an individual to work but also limit access on a terminal.

Mr. Eisenstadt commented that there must be consistency. Offenses that are not consistent from state to state as to their definition of a felony or a misdemeanor need to be made consistent within this program. Otherwise a person could be deemed a security risk in one port and not another. He emphasized that a federal standard must be established in order to prevent inconsistent application.

Mr. Eisenstadt lastly commented that Administrative Law Judges, who are independent individuals, should be assessing waivers and appeals.

Mr. Koch asked if there were further comments from NMSAC members before proceeding to a vote.

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Mark Witten suggested that CAPT Sturm clarify that the TWIC is not an access card, but has the primary purpose of being a means of identification.

CDR Stowe noted the questions presented to the CWG sought guidance on aspects of a possible program for the TWIC. It was made clear through the work of the CWG that access control belongs with the operator of the facility or vessel. The TWIC establishes a level of trust in the individual's identification card through the background check and the biometric link. The TWIC is an identity document. She also noted that the MTSA regulations place responsible for access control remains with owner/operators and none of the questions presented to the CWG expect to change this responsibility.

Ms. Himber moved and Mr. Halstead seconded that the CWG report be adopted as the recommendation of the NMSAC with labor's comments added to paragraph 13. A roll call vote was taken and results were as follows: 16 Yeas; 1 Nay – Mr. Stolpinski

Mr. Koch closed the discussion; commending the efforts of the workgroup and staff and stated his hope that their efforts will be a model for NMSAC engagement on future issues.

The meeting adjourned at 11:30 A.M.

The minutes have been reviewed for accuracy by CAPT Frank Sturm (Executive Director) and Mr. Chris Koch (Chair).